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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,542	09/17/2003	Avtar S. Dhindsa	10672/24	5958

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EXAMINER	
POUS, NATALIE R	

ART UNIT	PAPER NUMBER
3731	

DATE MAILED: 12/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/665,542	DHINDSA, AVTAR S.	
	Examiner	Art Unit	
	Natalie Pous	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-32 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) 17-32 is/are allowed.

6)☒ Claim(s) 1-16 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 2/26/04. 4/19/04
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see page 8, Objections to the specification, filed November 17, 2005, with respect to the specification have been fully considered. The objection to claim 16 as not providing antecedent basis for "for a rake comprising a plurality of shafts, each shaft comprising a raking portion that extends laterally away from the respective shafts, further comprising transversely extending elements between the shafts," upon considering applicants remarks, this objection is withdrawn.

Applicant's amendments with respect to claims 1-16 have been considered but are moot in view of new ground(s) of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Amended Claim 1, and claims 2, 4 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Chu et al. (US 6010512).

Regarding claim 1, Chu teaches an endoscopic debris extraction device comprising:

a support filament (15) comprising a first end portion;

a sheath comprising a lumen (11), the support filament disposed in the

lumen such that the sheath is slideable with respect to the support filament (Figures 2-4).

a collapsible rake carried by the first end portion of the support

filament, the rake (25) comprising a plurality of shafts (26), each shaft comprising a

respective raking portion (27) that extends laterally away from the respective shaft, wherein each raking portion extends away from only one side of a longitudinal plane defined by the sheath, it is noted that in accordance with figure 3, the raking portions (27) extend away from only one side (downward) of a longitudinal plane defined by the sheath (the plane of the paper);

the sheath movable with respect to the rake between a first position, in

which the shafts are received within the lumen of the sheath (Figure 4), and a second

position, in which the shafts extend beyond the sheath and hold the raking portions in position for stone raking operations (Figure 3).

Regarding claim 2, Chu teaches the invention of Claim 1 wherein the raking portions (27) comprise bent portions of the shafts (25).

Regarding claim 4, Chu discloses the invention of Claim 1 wherein the raking portions are received within the lumen of the sheath in the first position operations (Column 6, proximate lines 1-13).

Regarding claim 10, Chu discloses the invention of Claim 1 wherein the shafts (26) are secured (Column 5, proximate lines 59-65) to the support filament (15).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chu et al. in view of Ouichi (US 5993474) as a matter of design choice.

Chu teaches all aspects of claim 1 as described previously, but fails to disclose wherein:

- the raking portions comprise looped end portions on the shafts
- the looped end portions are joined to the shafts at an angle

Ouichi teaches a debris extraction device wherein the raking portions comprise looped end portions on the shafts (5') and wherein the looped end portions are joined to the shafts at an angle (5'). It would have been obvious matter of design choice to

modify the Chu reference by having the raking portions comprise looped end portions joined to the shafts at an angle as taught by Ouichi, since the applicant has not disclosed that having the raking portions comprise looped end portions joined to the shafts at an angle solves any stated problem or is for any particular purpose and it appears that the rake device would perform equally well with straight ends or with looped end portions joined to the shafts at an angle.

6. Claims 9 and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chu et al. in view of Foster (US 6500182).

Chu teaches all aspects of claim 1 as described previously, but fails to disclose wherein:

- the shafts are formed continuously with the support filament
- the shafts comprise a shape memory metal
- the shape memory metal comprises nitinol
- the shafts comprise a polymer
- the shafts comprise a plastic
- the shafts comprise a metal alloy

Foster teaches a medical retrieval device wherein the shafts are formed continuously with the filament in order to avoid structural weaknesses often found in connecting parts. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the retrieval device of Chu with shafts formed continuously with the filament in order to avoid structural weaknesses often found in connecting parts

Foster further teaches a medical retrieval device wherein the shafts are made of a shape memory alloy such as Nitinol in order to provide improved resistance to fracture or kinking. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the retrieval device of Chu with shafts made of a shape memory alloy such as Nitinol in order to provide improved resistance to fracture or kinking.

Foster further teaches a medical retrieval device wherein the shafts comprise a polymer such as plastic in order to provide elasticity. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the retrieval device of Chu with a polymer such as plastic in order to provide elasticity.

7. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chu et al. in view of Ginsberg.

Chu teaches all aspects of claim 1 as described previously, but fails to disclose wherein: The device comprises transversely extending elements between the shafts

Ginsburg teaches a retrieval device comprising transversely extending elements between the shafts in order to enhance the ability of the device to capture debris. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the retrieval device of Chu with transversely extending elements between the shafts as taught by Ginsberg in order to enhance the ability of the device to capture debris.

8. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chu et al. in view of Wessman et al. (US 6706054).

Chu teaches all aspects of claim 1 as described previously, but fails to disclose wherein:

- the raking portions are smoothly rounded at an exposed end
- the rake further comprises rounded balls at exposed ends of the raking portions

Wessman teaches an endoscopic device with extend in arms comprising smoothly rounded balls exposed at the ends in order to prevent puncturing tissue with sharp ends. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Chu with smoothly rounded balls as taught by Wessman in order to prevent puncturing tissue with sharp ends.

9. Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chu in view of Hillstead.

Chu teaches all aspects of claim 1 as described previously, but fails to disclose wherein:

- the raking portions comprise looped end portions on the shafts
- there is a smooth transition from the looped end portions to the shafts

Hillstead teaches a debris extraction device wherein the raking portions comprise looped end portions on the shafts (126, 128) and wherein there is a smooth transition from the looped end portions to the shafts (126, 128). It would have been obvious matter of design choice to modify the Chu reference by having the raking portions comprise looped end portions joined to the shafts at smooth transition as taught by Hillstead, since the applicant has not disclosed that having the raking portions comprise

looped end portions joined to the shafts at a smooth transition solves any stated problem or is for any particular purpose and it appears that the rake device would perform equally well with straight ends or with looped end portions joined to the shafts at a smooth transition.

Allowable Subject Matter

10. Claims 17-32 are allowed. The following is an examiner's statement of reasons for allowance:

With reference to claim 17, "wherein the raking portions do not clamp together when moved from the second portion to the first portion" causes claim 17 to overcome all prior art cited in the first action as each prior art reference do not teach a rake comprising a raking portion structured such that the shafts do not clamp together when received with in the lumen. Due to the fact that claim 17 is allowable over the prior art, all dependent claims, 18-32 are allowable as well.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalie Pous whose telephone number is (571) 272-6140. The examiner can normally be reached on Monday-Friday 8:00am-5:30pm, off every 2nd Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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primary examiner 3731
12/3/05